Remarks

The Applicant has amended the Specification to correct minor typographical error. Entry into the official file and examination on the merits is respectfully requested.

The Applicant has amended all of independent Claims 1, 11, 18, 20 and 21. In particular, Claims 1, 11, 18 and 20 have been amended to explicitly recite the temperature sensor referenced in Claim 21 and have further amended all of Claims 1, 11, 18, 20 and 21 to recite that there is a comparison of the measured ambient temperature from the temperature sensor with at least one set point temperature. The Applicant respectfully submits that the above amendments do not raise any new issues for consideration inasmuch as the temperature sensor was already present in Claim 21, requires no additional searching and places the claims into better condition for allowance. Entry into the official file is respectfully requested.

The Applicant notes the rejection of Claims 1-5, 11-13, 18, 20 and 21 under 35 U.S.C. §102 as anticipated by Weber. The Applicant notes with appreciation the Examiner's helpful comments wherein selected structure from the Weber disclosure is applied to various of those claims. The Applicant further notes with appreciation the Examiner's helpful comments with respect to the "receiver" and the programmable controller. The Applicants respectfully submit that Weber fails to disclose, either explicitly or implicitly, all of the claimed subject matter of independent Claims 1, 11, 18, 20 and 21. Details are set forth below.

The Applicant specifically claims a "programmable" controller. Weber fails to disclose this, either explicitly or implicitly. The Applicant notes the Examiner's reference to the Cambridge Advanced Learner's Dictionary to define "programmable." There are two problems with that approach. First, the word "programmable" does not appear anywhere in Weber. The Applicant has carefully scrutinized the entire Weber disclosure and it never refers to "programmable." This is a fatal flaw of Weber which by definition means that it cannot be applied as a §102 anticipatory reference. Withdrawal of the rejection on this basis alone is accordingly respectfully requested.

There is another problem. The Federal Circuit just last year issued a lengthy opinion in the *AWH v. Phillips* case which specifically addressed the issue of reliance on dictionary definitions. The Federal Circuit made it clear that it wishes for claim scope to be determined based on intrinsic evidence, as opposed to extrinsic evidence, which is exactly what a dictionary is. Therefore, the Applicant respectfully submits that the rejection relies on extrinsic evidence in

interpreting the Applicant's claims which is specifically prohibited by the Federal Circuit. Thus, the Applicant respectfully submits that the rejection relies on an interpretation of a word that is not even disclosed in the prior art and employs that non-existent word in a §102 rejection. The Applicant respectfully submits that Weber fails to disclose, either explicitly or implicitly, a programmable controller and that the rejection must fail on that basis. Withdrawal of the rejection is respectfully requested.

In any event, even assuming *arguendo* that Weber did disclose a programmable controller, the Weber disclosure still fails to disclose, either implicitly or explicitly, all of the subject matter specifically recited in independent Claims 1, 11, 18, 20 and 21. In that regard, the Applicant notes that all of those claims specifically call for a temperature sensor that is electrically connected to the programmable controller and the temperature sensor is compared to at least a set point temperature for use in controlling the operation of the temperature modifying device. The Applicant respectfully submits that Weber fails to disclose this. The Applicant believes that this is best illustrated by reference to the Weber drawings as helpfully referenced by the Examiner in the rejection. Thus, referring first to Fig. 1, there is disclosed a remote thermostat which measures local ambient temperature and that measurement, among other things, is sent by a wireless sender to a receiving antenna of one type or another. That remote thermostat in Fig. 1 does not contain a power coupler or a programmable controller as recited, for example, in Claim 1.

Turning to Fig. 2 of Weber, a receiving unit is shown. That receiving unit receives signals from the wireless sender shown in Fig. 1. Then, turning to Fig. 4, a portion of the receiving unit of Fig. 2 is shown in Fig. 4. The receiving unit is labeled as the control module in Fig. 4, a portion of which is also shown in Fig. 2. Fig. 4 also shows a separate temperature modifying device 80 such as an air conditioning unit.

The problem with Fig. 4, however, is that the control module does not include a temperature sensor electrically connected to a programmable controller. There are two problems with that. First, as noted above, the control module of Fig. 4 is not a programmable controller. It can readily be seen by reference to Fig. 4 and by reference to the text accompanying Fig. 4 in the Weber's specification that there is no disclosure that indicates that the control module is programmable as that term is well known to those skilled in the art.

The other problem is that there is no temperature sensor in the control module as shown in Fig. 4 and as described in the Weber specification. Instead, there is a temperature sensor in the temperature modifying device 80, but not the control module. Thus, Fig. 4 also fails to disclose the subject matter of all of the independent claims.

Fig. 5 shows another embodiment of a remote unit. That remote unit has a temperature sensor 110. However, it is not electrically connected to a programmable controller and does not contain a power coupler. Instead, the structure of Fig. 5 sends signals through a wireless sender to a receiving unit, which, in the context of the general Weber disclosure, contains a control module (though not a programmable one). Therefore, Fig. 5 and the text accompanying Fig. 5 in the Weber specification fails to disclose a programmable controller electrically connected to a temperature sensor.

Fig. 6 shows essentially a compendium of the earlier figures wherein a portable thermostat 152 contains a sensor and an air conditioning unit 142. However, that is not electrically connected to the master control module 160. Although there is a power connection 162 between the master control module 160 and the air conditioning unit 142, there is no electrical connection between a programmable controller and a temperature sensor. Thus, the Applicant respectfully submits that Fig. 6 is also inapplicable.

Fig. 7 is essentially similar to Fig. 5 wherein a remote unit is disclosed that sends wireless signals to a receiving unit. To the extent that there are sensors in the remote unit of Fig. 7, they are not electrically connected to a programmable controller as recited in the Applicant's independent claims.

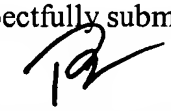
The Applicant respectfully submits that Weber fails to disclose several selected portions of the specifically claimed subject matter of the Applicant's independent claims. Weber utterly fails to mention the word "programmable", the definition of which is well known in the art, and accordingly, Weber in inapplicable on that point alone. Weber also fails to disclose a programmable controller electrically connected to a temperature sensor. The temperature sensors of Weber are located in separate devices, namely a remote unit or in the temperature modifying device. However, such temperature sensors are not located in the so called "receiving unit" of Weber which contains the (non-programmable) control module. This is another deficiency of Weber. The Applicant therefore respectfully requests withdrawal of the rejection of Claims 1-5, 11-13, 18, 20 and 21 based on Weber.

The Applicant notes the rejection of Claims 6, 7, 14, 15 and 19 under 35 U.S.C. §103 over Weber. The Applicant has already established that Weber fails to disclose several selected specifically recited aspects of the Applicant's independent claims. The Applicant respectfully submits that even if Weber were deemed to teach or suggest the further subject matter of Claims 6, 7, 14, 15 and 19 that the Weber disclosure would still fail to disclose teach or suggest the subject matter of the independent claims upon which Claims 6, 7, 14, 15 and 19 depend. Withdrawal of the rejection is accordingly respectfully requested.

The Applicant notes the rejection of Claims 8, 9, 10, 16 and 17 under 35 U.S.C. §103 under the hypothetical combination of Kath with Weber. The Applicant agrees that Weber fails to disclose a temperature control program, a memory for storing the temperature control program and related information in a device from the group consisting of a logic board, a microprocessor and an integrated circuit. The Applicant respectfully submits, however, that hypothetically combining Kath with Weber would still fail to teach or suggest the subject matter of the independent claims upon which Claims 8, 9 10, 16 and 17 depend. Thus, hypothetically combining Kath with Weber would still fail to teach or suggest the subject matter of Claims 8, 9, 10, 16 and 17 inasmuch as the combined disclosure would still fail to teach or suggest a programmable controller electrically connected to a temperature sensor. Withdrawal of the rejection of Claims 8, 9, 10, 16 and 17 is accordingly respectfully requested.

In light of the foregoing, the Applicant respectfully submits that the entire application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



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